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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|-------------------------|
| 10/084,839 | 02/26/2002 | Hatim Allawi | FORS-06666 | 6243 |
| 7590 | 07/08/2004 | | EXAMINER | |
| Mary Ann D. Brow MEDLEN & CARROLL, LLP Suite 350 101 Howard Street San Francisco, CA 94105 | | | | PATTERSON, CHARLES L JR |
| | | ART UNIT | PAPER NUMBER | 1652 |
| DATE MAILED: 07/08/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|---------------------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/084,839 | ALLAWI ET AL. |
| | Examiner Charles L. Patterson, Jr. | Art Unit 1652 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 46-50 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 46-50 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

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The examiner made an error in the previous restriction. He failed to notice that the SEQ ID NOS in claims 49 and 50 were not included in the SEQ ID NOS in claims 47 and 48. Claims 49 and 50 claim polypeptide sequences while claims 49-50 claim oligonucleotide sequences. Therefore the following supplemental restriction is done.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

1. Claims 46-48, drawn to a kit comprising two oligonucleotides and a polypeptide of SEQ ID NO: 28576 or encoded by SEQ ID NO:2856, classified in class 435, subclass 6.

2-2014. Claims 49-50, drawn to a kit comprising two oligonucleotides of SEQ ID NO: 169-211, 619-706, 709-2640 and 2837-4004 and a polypeptide, classified in class 435, subclass 6. The group numbers correspond to the sequence numbers.

The inventions are distinct, each from the other because:

The test kits of group 1 are drawn to polypeptides while those of groups 2-2014 are drawn to oligonucleotides. There is not any stated relationship between the polypeptides and oligonucleotides and therefore group 1 and groups 2-2014 are patentably distinct. The oligonucleotides of groups 2-2014 are structurally different and therefore are patentably distinct.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles L. Patterson, Jr., PhD, whose telephone number is 571-272-0936. The examiner can normally be reached on Monday - Friday from 7:30 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy, can be reached on 571-272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Charles L. Patterson, Jr.
Primary Examiner
Art Unit 1652

Patterson
July 6, 2004